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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

ADRIAN BENAVIDES-SCHORGI

Defendant.

Case No. 2:23-CR-00164-JVS

**DEFENDANT'S POSITION  
REGARDING SENTENCING;  
EXHIBITS**

Defendant Adrian Benavides-Schorgi, by and through his counsel of record,  
Deputy Federal Public Defender Terra Castillo Laughton, hereby submits his position  
regarding sentencing.

Respectfully submitted,

CUAUHTEMOC ORTEGA  
Federal Public Defender

DATED: June 3, 2024

By /s/ Terra D. Castillo Laughton

TERRA D. CASTILLO LAUGHTON  
Deputy Federal Public Defender

TABLE OF CONTENTS

|   | Page |
|---|------|
| I. INTRODUCTION .....   | 1    |
| II. PROCEDURAL HISTORY .....  | 1    |
| III. THE PRESENTENCE REPORT AND RECOMMENDATION.....   | 2    |
| IV. THE APPROPRIATE SENTENCE.....   | 3    |
| A. Legal Standard.....  | 3    |
| B. A Downward Variance is Appropriate Based on Mr. Benavides<br>Schorgi’s History and Characteristics.....                                    | 3    |
| 1. Mr. Benavides-Schorgi lost two father figures by the age of<br>twenty.....   | 3    |
| 2. Mr. Benavides-Schorgi is 23 years old and has no criminal<br>history points.....   | 8    |
| C. The Nature and Circumstances of the Offense Further Justify a<br>Downward Variance. ....   | 9    |
| 1. Mr. Benavides-Schorgi did not know the pills contained<br>fentanyl.....  | 9    |
| 2. Mr. Benavides-Schorgi was using significant amounts of<br>marijuana during the offense conduct and primarily sold<br>marijuana.....        | 11   |
| 3. When confronted by law enforcement and told what had<br>happened, Mr. Benavides-Schorgi immediately expressed<br>sincere remorse.....      | 13   |
| D. A sentence of 120 months imprisonment would achieve deterrence,<br>necessary treatment, and avoid unwarranted sentencing disparities. .... | 13   |
| V. CONCLUSION.....  | 15   |

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Twenty-three-year-old Adrian Benavides-Schorgi would do anything for his family.

After losing two father figures before the age of 20, Mr. Benavides-Schorgi was forced to step up and provide for his mom and brother. At a certain point, he made the mistake of selling drugs, mainly marijuana, to make ends meet and to pay for his own drug use. What happened in this case was tragic and Mr. Benavides-Schorgi has been extremely remorseful since he was first confronted by law enforcement nearly two years ago. He did not know that the three pills he sold to S.S. contained fentanyl and he did not intend to cause injury to the victims.

Mr. Benavides-Schorgi was just 21, and relying on marijuana daily himself, when the offense occurred. He has no criminal history points. He became a father for the first time two weeks after he was arrested last year, and has not yet been able to hold his son. Rather than spending his entire youth incarcerated, he wants the chance to help raise his child.

For all the reasons discussed below, Mr. Benavides-Schorgi respectfully requests a sentence of 120 months. Probation agrees that a 120-month sentence is appropriate, in light of Mr. Benavides-Schorgi's "substance abuse history, his disadvantaged upbringing, and stable employment," as well as his limited criminal history. ECF No. 41 (hereinafter "PSR") at ¶ 117; *see also* ECF 40 (Disclosed Recommendation Letter) at 1, 5.

### **II. PROCEDURAL HISTORY**

Mr. Benavides-Schorgi had his initial appearance on April 28, 2023. ECF No. 14 (minutes of PIA). He was ordered detained and has remained in custody since that time. ECF No. 9 (minutes granting request for detention). On February 5, 2024, he pled guilty to a first superseding information, pursuant to a plea agreement. ECF No. 31 (plea agreement); ECF No. 39 (minutes of change of plea).

### 1                   **III. THE PRESENTENCE REPORT AND RECOMMENDATION**

2                   Mr. Benavides-Schorgi agrees with the Presentence Investigation Report's  
3 Guidelines calculation and advisory sentencing range of 168-210 months, and with its  
4 recommendation of a 120-month sentence. PSR at 3; ECF No. 40. He makes the  
5 following objections to the PSR:

6                   Paragraph 7: In his plea agreement, Mr. Benavides-Schorgi agreed to a search  
7 condition but not a suspicionless one. The agreed-upon search condition requires  
8 "reasonable suspicion." *See* ECF 31 (Plea Agreement) at ¶ 2(i)(i). Mr. Benavides-  
9 Schorgi does not object to proposed condition #8 in Probation's disclosed  
10 recommendation letter, which contains this language. ECF No. 40 at 2-3.

11                  Paragraph 15 and 21: These paragraphs appear to contain a typo in the date,  
12 referring to March 24, 2022 and March 25, 2022, instead of *May* 24, 2022 and *May* 25,  
13 2022.

14                  Paragraphs 43-47: Mr. Benavides-Schorgi objects to the inclusion of additional  
15 allegations regarding surveillance conducted on him in 2022 after the instant offense.  
16 As Probation acknowledges, this is "Not Part of Relevant Conduct." PSR at 9 (heading  
17 before ¶ 43). Nor it is actually "Offense Behavior." *Id.* Rather, these paragraphs  
18 consist of unproven allegations of what a police officer claimed to have witnessed,  
19 which is not sufficiently reliable for the Court to rely upon at sentencing. *See generally*  
20 *Shepard v. United States*, 544 U.S. 13 (2005); U.S.S.G. § 6A1.3(a) (information  
21 considered at sentencing that relates to disputed factors must have "sufficient indicia of  
22 reliability to support its probable accuracy"). Paragraphs 43-47 should therefore be  
23 stricken from the PSR.

24                  Paragraph 51: Mr. Benavides-Schorgi's 2022 misdemeanor conviction for  
25 reckless driving should be assessed zero points, rather than one point. Under Section  
26 4A1.2 of the Guidelines, sentences for misdemeanor "careless or reckless driving" are  
27 counted "only if (A) the sentence was a term of probation of *more than one year* or a  
28 term of imprisonment of at least thirty days, or (B) the prior offense was similar to an

instant offense.” U.S.S.G. §4A1.2(c)(1) (emphasis added). In his reckless driving case, Mr. Benavides-Schorgi pled no contest to reckless driving and was sentenced to 12 months of probation, and a fine or 3 days in jail—below the threshold for Section 4A1.2(c)(1)(A). PSR ¶ 51. The remaining charges were dismissed. *Id.* Moreover, reckless driving is unrelated to the instant offense of distribution of fentanyl. *See* U.S.S.G. §4A1.2(c)(1)(B). Thus, this prior conviction should not generate any criminal history points.

#### IV. THE APPROPRIATE SENTENCE

##### A. Legal Standard

The Sentencing Guidelines are “effectively advisory.” *United States v. Booker*, 543 U.S. 220, 245 (2005); *see also Kimbrough v. United States*, 552 U.S. 85, 91 (2007). The Court “shall impose a sentence sufficient, but not greater than necessary” to achieve the objectives of sentencing. *See* 18 U.S.C. §§ 3553(a), 3661. In determining the appropriate sentence, courts must consider the factors enumerated in Section 3553(a), including the nature and circumstances of the offense, the history and characteristics of the offender, and the need for the sentence imposed to adequately address punishment, deterrence, protection of the public, and needed training or treatment of the defendant. 18 U.S.C. § 3553(a); *Booker*, 543 U.S. at 220.

When those factors are fully considered, a sentence of 120 months is appropriate here, as Probation recommends.

##### B. A Downward Variance is Appropriate Based on Mr. Benavides Schorgi’s History and Characteristics

###### 1. Mr. Benavides-Schorgi lost two father figures by the age of twenty.

As detailed in the PSR, Mr. Benavides-Schorgi grew up with his younger brother, Henry, in violent and gang-infested neighborhoods in Los Angeles. PSR at ¶¶ 59, 61. He witnessed gunshots, fights, theft, and a gang shootout. *Id.* at ¶ 61. Until he was about 12 years old, he was raised by his father and his mother, Nancy. *Id.* at ¶ 59. His father was the breadwinner, earning an income doing flooring work and

1 working for a moving company. *Id.* at ¶ 62. He was abusive, and would hit Mr.  
2 Benavides-Schorgi, make him kneel on uncooked rice, whip him with a cable, and  
3 make him take cold showers while he whipped him. *Id.* at ¶ 63.

4 When Mr. Benavides-Schorgi was around 12 years old, the family discovered  
5 that his father was using methamphetamine. *Id.* at ¶ 64. Mr. Benavides-Schorgi and  
6 his mother caught him injecting methamphetamine in the bathroom and his mother  
7 kicked his father out of the house. *Id.* His father tried repeatedly to reconnect,  
8 including when he was homeless living on the streets. But Mr. Benavides-Schorgi did  
9 not have further contact with him and he was not reintegrated into the family. *Id.* at  
10 ¶ 66. Mr. Benavides-Schorgi's early exposure to drugs began to normalize drug use in  
11 his young mind.

12 With his father gone, Mr. Benavides-Schorgi, still a child, became the man of the  
13 house. He immediately felt a deep sense of obligation to care for and provide for his  
14 mother and his younger brother. Their family began to struggle financially without  
15 their breadwinner. Mr. Benavides-Schorgi's immediate family of three moved around  
16 to several different apartments and even slept in their car for a short time. *Id.* at ¶ 67.  
17 They relied on the support of Mr. Benavides-Schorgi's grandmother, Dora Garceran,  
18 and her husband, Jesus Tintos. *Id.* at ¶ 65. Jesus worked as a mechanic and helped  
19 provide for them. They eventually moved in with Jesus and Dora for several years. *Id.*  
20 at ¶ 67.

21 While living together, Jesus took on an important role in Mr. Benavides-  
22 Schorgi's life. He became a father figure. *Id.* Jesus emphasized the importance of  
23 hard work and education, and would ask Mr. Benavides-Schorgi about what he was  
24 learning in school. *Id.* If he did well on a test, Jesus would reward him by taking him  
25 out to eat. *Id.* The family went to church on Sundays and would spend time playing  
26 soccer in a park afterward. *Id.* Jesus insisted Mr. Benavides-Schorgi graduate from  
27 high school and pursue a college education. *Id.* Mr. Benavides-Schorgi passed along  
28 these values to his longtime partner, Alondra Calderon, and his brother, Henry. *See Ex.*

1 1 (Ms. Calderon: “As we grew older, he encouraged me to continue my education. He  
2 would pick me off from college and we’d go out for lunch.”); Ex. 3 (Henry Benavides:  
3 “Adrian is the type to push people to keep chasing their goals . . . [he] was always by  
4 my side for big accomplishments we both did”; noting that Adrian will guide his own  
5 son to “get educated as well”).

6 In large part thanks to the support of Jesus, Dora, and Nancy, Mr. Benavides-  
7 Schorgi did not join a gang and finished high school. His family was very proud to see  
8 him graduate. PSR at ¶ 86 (verified high school diploma). However, to deal with  
9 stress and anxiety related to the struggles of his childhood, Mr. Benavides-Schorgi had  
10 begun smoking marijuana around 13 years old. *Id.* at ¶ 82. By the age of 16, he was  
11 smoking daily. *Id.*

12 Around the time of Mr. Benavides-Schorgi’s high school graduation, Jesus began  
13 having extra-marital affairs and distancing himself from the family. *Id.* ¶ 70. He fell  
14 out of touch with Mr. Benavides-Schorgi and started to ignore him. *Id.* This was  
15 painful for Mr. Benavides-Schorgi, who had to cope with losing his second father  
16 figure. *Id.*

17 In 2020, during the COVID-19 pandemic, Jesus was spending time in Mexico  
18 and Mr. Benavides-Schorgi planned to go see him. But before their visit, Jesus  
19 contracted COVID and died over Thanksgiving. *Id.* at ¶ 71. This was a tragic loss for  
20 Mr. Benavides-Schorgi. It also meant that his immediate family could no longer rely  
21 on Dora and Jesus for financial support. *Id.*

22 To cope with their new financial reality, Mr. Benavides-Schorgi had to work  
23 hard. His partner of ten years, Ms. Calderon, explains in her letter to the Court that he  
24 “has worked since he was able to” and “decided at a young age to be there for his  
25 mother and brother.” *See* Ex. 1. He was working in demolition and began to work as  
26 much as he could, including double shifts, in a “hard and dedicated hustle.” *Id.*; *see*  
27 *also* PSR at ¶ 90 (summarizing a letter from his employer praising his “interpersonal  
28

1 and communication skills”). To supplement his income and pay the family’s rent and  
2 other bills, as well as to support his own addiction, he began selling marijuana.

3 Before Mr. Benavides-Schorgi was arrested in this case, he and Ms. Calderon  
4 found out they were pregnant with their first child, a son. Ms. Calderon explains that  
5 he “never missed any of my doctors appointments to see his baby’s progress and  
6 health.” Ex. 1. She also recounts that “when we almost lost our baby boy he stayed by  
7 my side and never left.” *Id.* Later in the pregnancy, Mr. Benavides-Schorgi moved in  
8 with Ms. Calderon and they began to prepare for their life together as a family of three.  
9 *Id.* He continued to work hard as they awaited their son’s arrival, sometimes only  
10 sleeping 3 hours to make sure their expenses were covered. *Id.*

11 When Mr. Benavides-Schorgi was arrested, Ms. Calderon was nearly 9 months  
12 pregnant. PSR at ¶ 76. His son was born just two weeks later. Ex. 1. Because Mr.  
13 Benavides-Schorgi has been in custody since his arrest, he has been unable to hold his  
14 son, who is now about one year old. *Id.*; PSR at ¶ 76. Ms. Calderon laments that he “is  
15 missing so many of his son’s milestones and accomplishments.” Ex. 1. She looks  
16 forward to him being able to be present in the future at school events, graduations, and  
17 his son’s “firsts.” *Id.*

18 Below are some pictures of Mr. Benavides-Schorgi with his family:  
19  
20  
21  
22  
23  
24  
25  
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28





**Dora, Adrian, and Jesus at a school event**



**Adrian and Jesus at high school graduation**



**Nancy, Adrian, and Henry on prom night**



**Alondra and Adrian with their son's ultrasound**

Mr. Benavides-Schorgi's family describes him as a "good hearted, charismatic, and hardworking young man." Ex. 2 (letter from mother Nancy). His mother notes

1 that he always cared for her and made sure she ate and took her pills to manage her  
 2 diabetes. *Id.* His brother Henry identifies him as “basically my father figure,” who  
 3 turned Henry into the man he is now. Ex. 3. Angel Jesus Tintos, Jesus’s son, expresses  
 4 that Mr. Benavides-Schorgi had a “hard childhood . . . without a father” and that he  
 5 worked hard to help his mom with household expenses. Ex. 4. Angel also says he is  
 6 missed at family holidays. *Id.*

7 As a result of his difficult childhood, Mr. Benavides-Schorgi was instilled with a  
 8 determination to provide for his family. This noble goal ultimately led him astray and  
 9 he has now missed out on his son’s first year of life. In light of these factors, a  
 10 downward variance to 120 months is appropriate.

11 2. Mr. Benavides-Schorgi is 23 years old and has no criminal history  
 12 points.

13 A downward variance to 120 months is also supported by Mr. Benavides-  
 14 Schorgi’s age and his lack of criminal history.<sup>1</sup>

15 Mr. Benavides Schorgi was just 21 years old when the offense conduct occurred,  
 16 and is now 23. The PSR notes that the Guidelines recognize age may be relevant to  
 17 sentencing. *See* PSR ¶ 115 (citing U.S.S.G. § 5H1.1); ECF No. 40 at 5.<sup>2</sup> While Mr.  
 18 Benavides-Schorgi does not seek a departure, he was a young adult when the offense  
 19 occurred and, as discussed below, was smoking significant amounts of marijuana at the  
 20 time. He also suffered from adverse childhood experiences, and at the same time has  
 21 demonstrated he is amenable to rehabilitation. The Court may vary downward on these  
 22 grounds. *See generally* ECF No. 40 at 5 (“[T]he Probation Officer would alternatively  
 23

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24  
 25 <sup>1</sup> Mr. Benavides-Schorgi agreed in his plea agreement not to argue for departures  
 26 or adjustments relating to the offense level. *See* ECF No. 31 (Plea Agreement) at ¶ 14.  
 He is in no way asserting that any such departures or adjustments apply here.

27 <sup>2</sup> A proposed amendment to the Guidelines expected to go into effect on  
 28 November 1, 2024 will further clarify the importance of a defendant’s youthfulness at  
 the time of the offense. *See* Amendments to the Sentencing Guidelines, § 5H1.1,  
 available at [https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-  
 text-amendments/202405\\_Amendments.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202405_Amendments.pdf).

1 recommend a variance to 120 months custody based on the totality of statutory  
2 sentencing factors.”).

3 In addition, Mr. Benavides-Schorgi has zero criminal history points. *See*  
4 Objections, *supra*. In 2023, the Guidelines were amended to add a downward  
5 adjustment for zero-point offenders. U.S.S.G. § 4C1.1. Although the adjustment  
6 excludes offenses resulting in death or serious bodily injury, a downward variance is  
7 appropriate because Mr. Benavides-Schorgi did not know the pills contained fentanyl.  
8 *See* Part IV.C.1 below. Consider, by contrast, an individual with no criminal history  
9 who purposely sold fentanyl, knowing it was fentanyl and how dangerous it was, but  
10 where the buyer had a high tolerance and therefore did not suffer an overdose. That  
11 individual would get the benefit of the zero-point offender adjustment. Mr. Benavides-  
12 Schorgi should be granted a variance given his lack of knowledge and zero criminal  
13 history points.

14 Mr. Benavides-Schorgi’s young age at the time of the offense, combined with his  
15 lack of criminal history, supports his (and Probation’s) requested sentence of 120  
16 months.

17 **C. The Nature and Circumstances of the Offense Further Justify a**  
18 **Downward Variance.**

19 1. Mr. Benavides-Schorgi did not know the pills contained fentanyl.

20 Mr. Benavides-Schorgi was originally charged under 21 U.S.C. § 841(b)(1)(C)  
21 for distribution of fentanyl resulting in serious bodily injury. ECF No. 1 (Indictment).  
22 He pled guilty to distribution of fentanyl, and agreed in his plea agreement that a base  
23 offense level of 38 applies because of the serious bodily injury suffered by the victims.  
24 PSR ¶8; ECF No. 32 (First Superseding Information); ECF No. 31 (Plea Agreement) at  
25 ¶13. Section 2D1.1(a)(2) of the Guidelines and the underlying statute on which it is  
26 based, Section 841(b)(1)(C), suffer from several related issues that render them  
27 disproportionately punitive and effectively a strict liability offense, especially as  
28 applied to this case.

1        *First*, the defendant need not know that the drug he is selling is or contains  
 2        fentanyl—simply that it is or contains *some* controlled substance. *See* Manual of  
 3        Model Criminal Jury Instructions (9th Cir.) at § 12.4. *Second*, no specific mental state  
 4        is required with respect to the injury or death prong. Thus, a defendant need not intend  
 5        to cause serious bodily injury or death to the victim, know he is causing it, or even be  
 6        reckless with respect to that result. *See, e.g., United States v. Mayers-Johnson*, 2:19-cr-  
 7        270-ODW (C.D. Cal.), ECF No. 40 (motion to dismiss under the Fifth and Sixth  
 8        Amendments due to the lack of *mens rea* requirement with respect to the resulting-in-  
 9        death component of the offense). *Third*, there is no proximate cause requirement; it is  
 10       sufficient that the drug distributed is a but-for cause of the death or injury. *See United*  
 11       *States v. Houston*, 406 F.3d 1121, 1124–25 (9th Cir. 2005) (“We therefore join our  
 12       sister circuits in holding that proximate cause is not a required element for conviction  
 13       and sentencing under § 841(b)(1)(C) . . . [a]ll that is necessary under the statutory  
 14       language is that ‘death . . . results’”); *see also United States v. Burrage*, 571 U.S. 204,  
 15       210 (2014) (analyzing but-for causation and reserving ruling on the proximate cause  
 16       issue). In sum, a defendant who does not know he is selling fentanyl and does not  
 17       intend to cause serious bodily injury is still held criminally liable for that injury.

18       This describes Mr. Benavides-Schorgi. He sold three pills in a single transaction  
 19       to one individual, but did not know that the pills he sold contained fentanyl, as he more  
 20       typically sold marijuana. *See* ECF No. 31 (Plea Agreement) at ¶11 (factual basis  
 21       stating “Defendant did not know the pills contained fentanyl.”). Nor is there any  
 22       evidence he intended to cause injury to the victims or knew he was causing them injury.  
 23       To the contrary: when law enforcement agents informed him what had happened to the  
 24       victims, he immediately became emotional and remorseful. *See* Part IV.C.3 below.

25       This framework results in defendants like Mr. Benavides-Schorgi facing  
 26       sentencing exposure comparable to (or even much higher than) certain intentionally  
 27       violent offenders, as illustrated by the following table:  
 28



|                    | <b><u>Second-degree murder</u></b> | <b><u>Manslaughter</u></b>  | <b><u>Attempted murder</u></b>  | <b><u>Attempted manslaughter</u></b> | <b><u>Mr. Benavides-Schorgi's case</u></b>                      |
|--------------------|------------------------------------|---|---|--------------------------------------|---|
|                    | <i>18 U.S.C. § 1111</i>            | <i>18 U.S.C. § 1112</i>   | <i>18 U.S.C. § 1113</i>   | <i>18 U.S.C. § 1113</i>              | <i>21 U.S.C. § 841(b)(1)(C)</i>                                 |
| Mandatory Minimum  | None                               | None  | None  | None                                 | None under charge of conviction; 20 years as originally charged |
| Statutory Maximum  | Life                               | 15 years (voluntary); 8 years (involuntary)                                     | 20 years  | 7 years                              | 20 years under charge of conviction; life as originally charged |
| Base Offense Level | 38<br><i>U.S.S.G. § 2A1.2</i>      | 29 (voluntary); 12-22 (involuntary)<br><br><i>U.S.S.G. §§ 2A1.3 &amp; 2A1.4</i> | 33 (attempted first-degree murder); 27 (otherwise)<br><br><i>U.S.S.G. § 2A2.1</i> | 14<br><br><i>U.S.S.G. § 2A2.2</i>    | 38<br><br><i>U.S.S.G. § 2D1.1</i>                               |

As this table reflects, an individual convicted of manslaughter or attempted murder begins at a significantly lower base offense level than Mr. Benavides-Schorgi.

As a policy matter, the sentencing scheme is also counterproductive. Due to the risk of harsh sentencing outcomes, individuals who consume fentanyl or witness others doing so are afraid to report overdoses for fear of being punished for their involvement. *See generally* Ex. 5 (criticism of proposed state sentencing scheme by mother of deceased overdose victim).

The flawed and disproportionate nature of the applicable sentencing scheme further justifies a downward variance, especially under the specific facts of this case.

2. Mr. Benavides-Schorgi was using significant amounts of marijuana during the offense conduct and primarily sold marijuana.

By the time of the offense conduct, Mr. Benavides-Schorgi was smoking up to 10 blunts (marijuana cigars) per day and was under the influence when the offense

1 occurred. PSR at ¶¶ 82, 84. As he acknowledges, this affected his reasoning. Had he  
 2 not been relying daily on marijuana, he would not have been involved in this offense.  
 3 *Id.* at ¶ 84.

4 Scientific literature confirms that chronic marijuana use contributes to poor  
 5 judgment, impulsivity, and a reduced ability to understand potential negative  
 6 consequences. *See, e.g.,* Michael Wesley et al., *Poor Decision-Making by Chronic*  
 7 *Marijuana Users is Associated with Decreased Functional Responsiveness to Negative*  
 8 *Consequences*, 191 Psych. Res. 51 (Jan. 30, 2011), available at  
 9 <https://www.sciencedirect.com/science/article/abs/pii/S0925492710003501?via%3Dihub>;  
 10 [b](https://www.sciencedirect.com/science/article/abs/pii/S0925492710003501?via%3Dihub); Brian F. O'Donnell et al., *Decision Making and Impulsivity in Young Adult Cannabis*  
 11 *Users*, 12 Front. Psych. (June 30, 2021), available at  
 12 <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2021.679904/full>.  
 13 *Id.* Mr. Benavides-Schorgi acknowledges his drug use was a problem for him, and is  
 14 interested in treatment. PSR at ¶ 85.

15 The record in this case makes clear that in addition to using marijuana, Mr.  
 16 Benavides-Schorgi primarily sold it, as opposed to other drugs. This was true for his  
 17 dealings with victim S.S. In her interview with law enforcement, S.S. stated that an  
 18 individual who was later confirmed to be Mr. Benavides-Schorgi was her regular  
 19 marijuana dealer. PSR ¶ 14. She explained that she purchased “Molly” from him only  
 20 because her regular molly dealer was unavailable. *Id.*<sup>3</sup>

21 This context shows that Mr. Benavides-Schorgi was not in the business of  
 22 regularly selling pills or other drugs aside from marijuana. Together with the impact of  
 23 Mr. Benavides-Schorgi's own marijuana use, which impaired his judgment, this further  
 24 justifies a downward variance.

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25  
 26  
 27  
 28 <sup>3</sup> Indeed, the only evidence prior to his guilty plea that Mr. Benavides-Schorgi  
 sold S.S. pills—as opposed to marijuana—on May 24, 2022 was her statement to that  
 effect.

1           3.     When confronted by law enforcement and told what had happened,  
 2                 Mr. Benavides-Schorgi immediately expressed sincere remorse.

3           In September 2022, about four months after the offense occurred, law  
 4 enforcement officers executed a search warrant at Mr. Benavides-Schorgi's apartment  
 5 in West Los Angeles. While at his home, officers interviewed him, asking him  
 6 questions about his upbringing and drug sales.<sup>4</sup> Mr. Benavides-Schorgi explained that  
 7 he sold marijuana to help support his mom and to make ends meet.

8           More than an hour into the 90-minute interview, the agents told him that the pills  
 9 he sold had seriously injured people. Mr. Benavides-Schorgi pleaded with the agents to  
 10 tell him exactly what had happened. When they explained that the victims had not  
 11 died, but had suffered significant injuries, Mr. Benavides-Schorgi began to sob and was  
 12 emotional throughout the rest of the interview. Through tears, he said if he could talk  
 13 to "that person," he would tell them "I'm so sorry." The agents declined his request to  
 14 speak directly to the victims, but they acknowledged that that he honestly felt remorse  
 15 for what happened. They arrested him six months later.

16           Mr. Benavides-Schorgi's acceptance of responsibility has continued in this case.  
 17 He did not file any pretrial motions and pled guilty pursuant to a plea agreement with  
 18 the government.<sup>5</sup> See ECF No. 39 (minutes of change of plea).

19     **D.     A sentence of 120 months imprisonment would achieve deterrence,**  
 20           **necessary treatment, and avoid unwarranted sentencing disparities.**

21           This is Mr. Benavides-Schorgi first federal case and the first time he has spent  
 22 any meaningful time in custody. Therefore, any sentence imposed will have a  
 23 significant deterrent effect. This is especially true because with every day he is in  
 24 custody, Mr. Benavides-Schorgi is missing out on being a father to his first child. See

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26           <sup>4</sup> An audio recording of this interview was produced in discovery. The  
 27 description that follows is based on the undersigned's review of the recording.

28           <sup>5</sup> He did not file any pretrial motions despite being improperly Mirandized during  
 his September 2022 interview with law enforcement and despite the agents  
 inappropriately searching his vehicle based on his mother's consent.

1 Exs. 1 & 2. He has every reason to remain law-abiding once released. He is personally  
2 motivated to do so and his family stands ready to welcome him home and support him  
3 upon release. *See* Exs. 1-4. He has goals of attending trade school to become an  
4 electrician or plumber. PSR at ¶ 87. In addition, he is interested in owning his own  
5 construction or demolition business and helping others by providing jobs. Ex. 1; PSR  
6 at ¶ 92. He is also welcome to return to his prior demolition job. PSR at ¶ 90.

7 While in custody, Mr. Benavides-Schorgi has pursued programming and  
8 rehabilitation. He has completed more than 16 classes in Attitudes for Success -  
9 Breaking Barriers, and 50 hours of instruction in English as a Second Language. PSR  
10 at ¶ 89 (verified certificates of attendance). He is interested in pursuing drug treatment  
11 programming and additional educational courses both in and out of custody. *Id.* at ¶ 85.

12 Mr. Benavides-Schorgi's requested sentence is also consistent with other similar  
13 cases in this District. For example, in *United States v. Lopez*, 21-cr-00109-VAP (C.D.  
14 Cal.) the defendant was sentenced to 120 months where the victim died from their  
15 overdose. *See* ECF No. 53 (Judgment and Commitment Order); ECF No. 31 (Plea  
16 Agreement). In *United States v. Castillo*, 21-cr-00570-SVW (C.D. Cal.), the defendant  
17 was sentenced to 120 months, in addition to 60 months on a related gun charge, where  
18 the victim died and the defendant continued distributing after the victim's death. *See*  
19 ECF No. 73 (Judgment and Commitment Order); ECF No. 38 (Plea Agreement).  
20 Specifically, after the victim died, Mr. Castillo was found with 863 pills containing  
21 fentanyl and two firearms. ECF No. 38.

22 In contrast here, Mr. Benavides-Schorgi caused serious bodily injury (not death),  
23 pled guilty to selling three pills in a single sale on one occasion, did not know the pills  
24 he sold contained fentanyl, did not possess any additional fentanyl, and did not possess  
25 any guns. Thus, a sentence no more than the 120 months imposed in *Lopez* and  
26 *Castillo* is appropriate here and would avoid unwarranted sentencing disparities.



**V. CONCLUSION**

For the foregoing reasons, Mr. Benavides-Schorgi respectfully requests that the Court adopt Probation's recommendation and sentence him to 120 months.

Respectfully submitted,

CUAUHTEMOC ORTEGA  
Federal Public Defender

DATED: June 3, 2024

By /s/ Terra Castillo Laughton

TERRA CASTILLO LAUGHTON  
Deputy Federal Public Defender

**Index of Exhibits**

| <u>Exhibit</u> | <u>Description</u>   |
|----------------|--|
| 1              | Letter from Alondra Calderon   |
| 2              | Letter from Nancy Schorgi  |
| 3              | Letter from Henry Benavides  |
| 4              | Letter from Angel Tintos   |
| 5              | <i>Senate Bill 44 by Sen. Tom Umberg Will Put More People at Risk of Overdosing From Fentanyl</i> , Orange County Register |

**PROOF OF SERVICE**

I, **Erica Bustos** declare that I am a resident or employed in Orange County, California; that my business address is the Office of the Federal Public Defender, 411 West Fourth Street, Suite 7110, Santa Ana, California 92701-4598, Telephone No. (714) 338-4500; that I am over the age of eighteen years; that I am not a party to the action entitled above; that I am employed by the Federal Public Defender for the Central District of California, who is a member of the Bar of the State of California, and at whose direction I served a copy of the attached **DEFENDANT'S POSITION REGARDING SENTENCING; EXHIBITS** on the following individual(s) by:

☐ Placing  
same in a sealed  
envelope for  
collection and  
interoffice delivery  
addressed as  
follows:

☐ Placing  
same in an  
envelope for hand  
delivery addressed  
as follows:

☐ Placing  
same in a sealed  
envelope for  
collection and  
mailing via the  
United States Post  
Office addressed as  
follows:

☐ Faxing  
same via facsimile  
machine addressed  
as follows:

**VIA EMAIL**  
**JUDITH TAPIA, USPPO**  
**Judith\_tapia@cacp.uscourts.gov**

This proof of service is executed at Santa Ana, California, on **June 3, 2024**.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Erica Bustos  
**Erica Bustos**